

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

WINIFRED BLACKLEDGE

Plaintiff,

vs.

**ALABAMA DEPARTMENT OF
MENTAL HEALTH & MENTAL
RETARDATION & COMMISSIONER
JOHN HOUSTON, in his Official
Capacity as Commissioner.**

Defendants.

CASE No.: CV 2:06-CV-321-ID

**PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE ANY TESTIMONY, EVIDENCE
OR ARGUMENT REGARDING THE PLAINTIFF'S RETALIATION CLAIMS
AND THE DISMISSAL OF PLAINTIFF'S RETALIATION CLAIMS**

COMES NOW, Plaintiff Winnifred Blackledge, by and through undersigned counsel, in the above-styled matter and pursuant to Rules 401, 402, and 403 of the Federal Rules of Evidence and applicable state and federal law, and move to exclude from the trial any testimony, evidence or argument by any party, witness or attorney regarding Plaintiff's retaliation claims or the dismissal of her retaliation claims on summary judgment. As grounds for said motion, Plaintiff states the following:

1. Federal Rule of Evidence 402 states that only evidence which is relevant to the legal issues in this case may be admitted as competent evidence. "Relevant" is evidence defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid.

401. On October 25, 2007, Plaintiff's retaliation claims were dismissed on summary judgment. (Dkt. # 46; Memorandum Opinion and Order). The claims to be tried in this action are solely the claims for discriminatory denial of promotions on the basis of race. Therefore, testimony, evidence or argument regarding Plaintiff's retaliation claims has no tendency whatsoever to make a material fact of the present action more or less probable. Such testimony, evidence or argument is not relevant to the legal issues at hand, which is whether Plaintiff was denied promotions because of her race. Therefore, any testimony, evidence or argument should be excluded pursuant to Fed.R.Evid. 401 and 402.

2. In the event this testimony is deemed to have some probative value, the evidence should still be excluded because it is substantially more prejudicial, confusing, and misleading than it is probative. Fed.R.Evid. 403. As the comments to Rule 403 states, the Rule is intended to prohibit evidence which, although may have somewhat probative value, should be excluded based on the fact that it may induce a decision based on emotion or prejudice. See Fed.R.Evid. 403, Advisory Committee Notes, 1972. Testimony, evidence and argument regarding retaliation or the dismissal of such claims could lead a jury to believe that Plaintiff's remaining promotion claims should be dismissed or lead them to believe her remaining promotion claims are without merit. Rule 403 also allows the exclusion of evidence which may confuse the jury. In the instant case, the pertinent legal issues are whether the defendant violated Title VII and Section 1981 regarding promotions. The retaliation claims are no longer remaining in this action and therefore testimony, evidence and argument regarding these claims or testimony regarding the dismissal of these claims should not be put before the jury in any way.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully request this Honorable Court to grant Plaintiff's Motion in Limine regarding the exclusion of any testimony, evidence or argument concerning Plaintiff's retaliation claims and the granting of summary judgment as to such claims.

Respectfully submitted,

/s/ Joshua D. Wilson
Joshua D. Wilson
Attorney for the Plaintiff

OF COUNSEL:
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CERTIFICATE OF SERVICE

I do hereby certify that I have filed a copy of the above and foregoing by filing the same with the EC/CMF system, which will provide notification to the following:

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This the 11th Day of February, 2008.

/s/ Joshua D. Wilson
Of Counsel